

**REMARKS**

Claims 1-35 are pending in the present application. In the Office Action mailed April 30, 2004, the Examiner rejected claims 1, 3-5, and 7 under 35 U.S.C. §102(b) as being anticipated by Powell (USP 4,648,023). The Examiner next rejected claims 2, 6, and 23-25 under 35 U.S.C. §103(a) as being unpatentable over Powell. The Examiner then rejected claim 22 under 35 U.S.C. §103(a) as being unpatentable over Powell, in view of Kehnemuyi et al. (USP 4,975,841). Claims 8-21 and 26-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Powell, in view of Parad (USP 5,369,570). Claim 23 was objected to under 37 CFR 1.75 as being a duplicate of claim 2.

**Procedural Background**

Before substantively addressing the currently proffered rejections with respect to each claim, Applicant wishes to note the procedural history of the currently-pending application. The current application was filed on December 22, 2000, and, therefore, has been pending for over three-and-one-half years. The current Office Action is the fifth action on the merits and applies what is now the third distinct reference. Applicant has overcome each of the previously proffered rejections and, at one point, has gone so far as to cancel all non-allowed subject matter so as to expedite prosecution and put the application in condition for allowance. Nevertheless, all claims stand rejected. The Examiner is reminded that the best reference should always be applied and unduly burdensome prosecution is to be avoided. *See* MPEP §904.03.

**Claim Objections**

Regarding the Examiner's objection to claim 23 as being "a duplicate of claim 2," Applicant believes the Examiner's assertion is incorrect. First, while claim 23 does include the elements called for in claim 2, claim 23 includes additional elements not found in claim 2. Therefore, upon even a cursory review, claim 23 is not a duplicate of claim 2. Second, claim 23 is a combination of the subject matter of claim 2 and claim 1 as originally filed. This was explained in the January 9, 2003, Response to the October 8, 2002, Office Action, wherein claim 1 was first amended and claim 23 was added. Therefore, upon a review of claim 23 and a comparison with the elements of claims 1 and 2, it is clear that claim 23 includes the elements of claim 2 in combination with the

elements of claim 1 prior to the amendment made to claim 1 responsive to the October 8, 2002, Office Action. Therefore, claim 23 is not "a duplicate of claim 2."

**Claim Rejections**

The Examiner rejected claims 1, 3-5, and 7 under §102(b) as anticipated by Powell. With respect to claim 1, the Examiner provided an explanation of the Examiner's interpretation of Powell with respect to the elements of claim 1. However, the Examiner's explanation includes a reference to "Christensen" within the discussion of Powell. Therefore, the Examiner's rejection cannot be characterized as anticipated under §102(b) since the Examiner is combining references, or the Examiner simply copied and pasted from the previous rejection in which Christensen was applied, and then overcome by Applicant. In either case, the rejection is defective.

Nevertheless, Powell simply does not teach that which is called for in claim 1. Claim 1 calls for the display of "real-time status of product availability" which is achieved via automation. Specifically, claim 1, in part, calls for "automatically querying a database, for data of a plurality of products that are scheduled for production, at regular time intervals for a date when each product will be ready for shipment for the plurality of products, and if the date does not exist, skipping that product, otherwise" performing a variety of additional steps. Therefore, claim 1 is specific that the steps for achieving the display of real-time status of product availability is through a plurality of automated operations. As explained in the Background of the Invention Section of the current application, the claimed technique improves upon traditional database technology that merely provides record keeping and tallying capabilities but which are "hampered by limited reporting options."

On the other hand, Powell teaches the very systems and methods identified in the Background of the Invention Section of the current application. That is, Powell teaches a system and method that allows for record keeping and tallying capabilities but fails to teach or suggest "displaying real-time status of product availability" achieved through automation, as called for in claim 1. Powell teaches manual data compilation and calculation which is only then stored within a control computer to perform "slack calculations" and display an individual component's slack value. Powell does not teach or suggest automatically extracting data from a database for calculations or "listing of

each product when the product is available for shipment for product availability management.”

Powell teaches that “[a] network such as that in Fig. 1 is generated for all manufacturing steps that are to be controlled by the subject invention.” Col. 3, Ins. 23–25. Powell is then explicit that “this is done by the production control personnel.” Col. 3, Ins. 25–26. Powell continues by stating that “production control personnel will also identify the purchase material required” and that “[t]his identification task is the same as that normally performed by the production control personnel in many existing manual systems of control.” Col. 3, Ins. 29–36.

Therefore, Powell does not teach “automatically querying a database, for data about a plurality of products that are scheduled for production,” as called for in claim 1. Rather, Powell teaches manually performing the compilation of data pertaining to activities or manufacturing steps. Therefore, contrary to the Examiner’s assertion, “column 2, lines 18-29” of Powell does not teach “automatically querying... otherwise” but actually teaches a plurality of manually-performed steps.

Powell does not disclose or suggest the method called for in claim 1 which calls for automatic data extraction and processing “about a plurality of products that are scheduled for production.” Rather, the object of Powell “is to provide a control system for small order quantity manufacturing.” Col. 2, Ins. 1–2. As Powell is only concerned with “small order quantity manufacturing,” the system of Powell is limited to manual data extraction. On the other hand, the claimed invention is not so limited to “small order quantity manufacturing” and, therefore, includes a complex system and method which requires that data extraction be automated, as called for in claim 1.

For at least the above reasons, Applicant believes claim 1 is patentably distinct from the art of record. However, it should be noted that in preparing the instant response, Applicant identified a typographical error that has been corrected by this Amendment. Additionally, claims 2–7 are in condition for allowance at least pursuant to the chain of dependency.

The Examiner then rejected claims 2, 6, and 23 -25 under §103(a) as being unpatentable over Powell. Regarding claim 23, the Examiner stated that “[c]laim 23 merely recites the limitation of claims 1 and 2 combined, thus is rejected for the same

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reasons stated in claims 1 and 2 above." However, as previously shown, Powell fails to teach or suggest that which is called for in claim 1. Since Applicant has distinguished claim 1 from the art of record, this rejection too is overcome.

Nevertheless, with respect to the Examiner's comments regarding claim 2, and the similarly included subject matter within claim 23, Applicant believes the Examiner's rejection falls drastically short of that which is required to establish a *prima facie* case of obviousness. The Examiner stated that "[a]lthough Powell does not specifically show adding orders, sales revenue and displaying a number of orders and total revenue for each product category, it would have been obvious to one of ordinary skill in the art to include such features in order to manage revenue and cost for accounting purposes."

Applicant believes that this fails to establish a *prima facie* case of obviousness and, in fact, that one cannot be made based on the art of record. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP §2143

Applicant believes that a *prima facie* case of obviousness cannot be made based on the art of record because, as will be shown below, (1) the reference(s) are directed to a different purpose than the claimed invention and there is no motivation to modify in a way done so by the Examiner; (2) the proposed modification would not have a reasonable expectation of success; and (3) all the elements of the present claims are not present in the references. The Examiner has not established the three basic criteria required under MPEP §2143.

The Examiner failed to provide any suggestion or motivation for the proposed modification of Powell other than to state that such would be advantageous "for accounting purpose." Applicant believes this "motivation" is superficial, excessively

broad, and without any substantive meaning. That is, the Examiner gave no explanation of "for accounting purposes" and failed to explain how such "accounting purposes" apply to either the claimed invention or the art of record. Additionally, the Examiner has not provided any suggestion or motivation of how such an augmentation of Powell "for accounting purposes" could be achieved. Therefore, the Examiner has not established any basis for a reasonable expectation of success for performing such a modification "for accounting purposes." Further, the prior art simply does not suggest all the limitations of claims 2 or 23, as illustrated with respect to claim 1.

For at least these reasons, claims 2 and 23 are patentably distinct from the art of record. Accordingly, claims 24 and 25 are in condition for allowance pursuant to the chain of dependency.

The Examiner then rejected claims 8-21 and 26-35 under §103(a) as being unpatentable over Powell in view of Parad. In proffering this rejection the Examiner stated that "[a]lthough Powell does not specifically show the use of temporary tables, it is well known in the art to use temporary tables for storing data during a continuous scheduling process as shown by Parad."

The Examiner supported this conclusion by summarily stating that "it would have been obvious to one of ordinary skill in the art to include the claimed features while implementing the computer program product of Powell in order to maintain continuous update as actual progress is being monitored." It appears that the Examiner is confused as to what Powell actually discloses. That is, as previously addressed with respect to claim 1, Powell is specific that the majority of data management be performed manually. See Col. 3, Ins. 19-36. Powell is explicit that a computer, and, therefore, a computer program, is only used for certain steps such as calculating the baseline schedule, linking external components, and calculating slack variables. See Col. 3, Ins. 47-48, Col. 3, ln. 67-Col. 4, ln. 20, and Col. 4, Ins. 61-65.

Powell's express requirements, as recited above, run directly afoul of the Examiner's position that Powell may be modified to include the temporary tables disclosed in Parad. Furthermore, Powell limits the use of computers and computer programs to specific tasks. As such, implementing a computer program "in order to maintain continuous updates as actual progress is being monitored," is well outside the

scope of Powell and, in fact, is contrary to the express teachings of Powell. Therefore, the references cannot be combined in this manner and a sustainable *prima facie* case of obviousness has not been proffered. *See* MPEP §§2141.02 and 2143.

Even if the Examiner's proposed modification of Powell were allowed, the combination fails to teach or suggest each and every element of the claim. That is, even if any computer program and associated temporary table were to be included within the system disclosed by Powell, neither Powell nor Parad teaches or suggests the use of the temporary tables as called for in claim 8. Claim 8 expressly calls for the computer to "store the number of days before each product is available in temporary tables," "access the temporary tables to display the number of days before each product is available," and "update the temporary tables periodically." Nowhere does Powell or Parad teach or suggest the performance of these very specific operations, let alone teach or suggest utilizing temporary tables in this manner to perform the very specific operations. In fact, the Examiner previously acknowledged this distinction when the claims were previously allowed and has yet to provide any support to the contrary. *See* Office Actions mailed 3/7/03 and 5/16/03.

Accordingly, the Examiner's unsupported position is tantamount to taking Official Notice, which is an avenue previously attempted and then shown to be unsupportable. That is, after expressly stating in the Office Action mailed March 7, 2003, that claims 8-21 and 26-35 were allowed, at least due to the use of temporary tables in the manner claimed, the Examiner, in the Office Action mailed May 16, 2003, withdrew the allowance of claims 8-21 and 26-35 and took Official Notice "that it is well known in the database art to use temporary tables to store information." Responsive to the Examiner's withdrawal of the allowability of the aforementioned claims, Applicant went to great lengths to illustrate that the Examiner's use of Official Notice was improper under the MPEP. *See* Response mailed July 16, 2003. Applicant established through in-depth analysis that the Examiner's use of Official Notice was traversed and thereby shifted the burden to the Examiner to "cite a reference in support of his or her position" as required under MPEP §2144.03.

In the current Office Action, the Examiner attempted to establish such by using Parad. However, as shown above, the Examiner has clearly failed to provide any support

to show that the use of temporary tables in the manner claimed is well known. Rather, to the contrary, Applicant has shown that yet another reference fails to teach that which is claimed. The Examiner cannot continue to assert conclusion as fact without support.

Therefore, for at least these reasons, claim 8 is patentably distinct from the art of record. Furthermore, claims 9-15 are in condition for allowance pursuant to the chain of dependency.

Regarding claim 16, the Examiner failed to address the elements expressly called for within the claim. Rather, the Examiner instead rejected claim 16 in combination with claim 8. However, claim 16 includes elements differing from the elements of claim 8. The Examiner is reminded that to establish a *prima facie* case of obviousness, the Examiner must show that each and every element of the claims is taught or suggested by the art of record. *See* MPEP §2143. Nevertheless, for at least the reasons articulated above with respect to claims 1, 23, and 8, Applicant believes claim 16 is patentably distinct from the art of record. Accordingly, claims 17-21 are in condition for allowance pursuant to the chain of dependency.

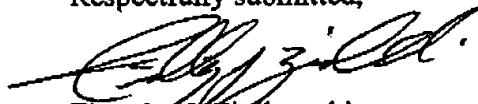
With respect to claims 26 and 30, the Examiner merely stated that the claims "correspond respectively to a method and system of claim 8, thus are rejected for the same reasons stated in claim 8 above." Again, the Examiner is reminded that to establish a *prima facie* case of obviousness the Examiner carries the burden of establishing that each and every element of the claims is taught or suggested by the art of record. Claims 8, 26, and 30 all include differing elements and, therefore, the Examiner has not met this burden. Nevertheless, Powell fails to teach or suggest a system or method for achieving the automated system called for in both claims 26 and 30. Furthermore, as previously shown, the Examiner failed to meet the three requirements in proffering a *prima facie* case of obviousness based on the combination of Powell and Parad. For at least the reasons articulated above with respect to claims 1, 8, 16, and 23, Applicant believes claims 26 and 30 are patentably distinct from the art of record. Therefore, claims 27-29 and 31-35 are in condition for allowance pursuant to the chain of dependency.

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Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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